

**UNITED STATES DISTRICT COURT
for the
DISTRICT OF MASSACHUSETTS**

DAVID HEREDIA,

Plaintiff,

v.

MILLENNIUM TELECARD, INC., and

FADI SALIM,

Defendants.

Civil Action No. 09-cv-10363

COMPLAINT AND DEMAND FOR TRIAL BY JURY

This is an action for the infringement of the copyright to an original work of art created and owned by plaintiff. This Court has jurisdiction over the subject matter of this Complaint under 28 U.S.C. § 1338(a), and it has personal jurisdiction over defendants because they routinely ship and sell merchandise into the Commonwealth of Massachusetts. Venue is appropriate in this Court under 28 U.S.C. § 1400(a).

Parties

1. Plaintiff, David Heredia is an individual having a principal place of business at 20000 Plum Canyon Road #824, Santa Clarita, California. Mr. Heredia is a professional artist who regularly creates and sells original works of art.

2. Defendant, Millennium TeleCard, Inc. ("Millennium"), is a corporation having a principal place of business at 178 Lakeview Avenue, Clifton, NJ 07011. Millennium is in the business of manufacturing, distributing, and/or selling pre-paid telephone calling cards.

3. Defendant, Fadi Salim ("Salim") is either the President or the chief

executive or operating officer of Millennium. Heredia is informed and believes that Salim has the power and authority to direct the actions of Millennium and has a direct financial interest in the activities of Millennium that led to the copyright infringement described herein.

Count I

4. In or around February 2006, Heredia created an original color illustration depicting a highly stylized figure wearing a backpack and sunglasses (the “Urban Backpacker Illustration”). A copy of the Urban Backpacker Illustration is annexed hereto as Exhibit A and is incorporated herein by reference.

5. Heredia first published the Urban Backpacker Illustration on or about February 25, 2006, on the website located at <<http://www.drlna.com>>.

6. Heredia caused his copyright in the Urban Backpacker Illustration to be registered in the United States Copyright Office on or about December 8, 2008, such registration being assigned Registration No. VA0001654698.

7. Millennium has in the past and it continues to manufacture, distribute, and/or sell to the public, pre-paid telephone calling cards which prominently depict Heredia’s Urban Backpacker Illustration thereon. A copy of such calling card is annexed hereto as Exhibit B and is incorporated herein by reference.

8. Millennium has manufactured, distributed, and/or sold said pre-paid telephone calling cards which depict Heredia’s Urban Backpacker Illustration and it continues to do so all without authorization or license from Heredia.

9. Heredia first learned of Millennium’s unauthorized use and reproduction of his Urban Backpacker Illustration in or about November 2008.

10. Millennium's actions in manufacturing and distributing its unauthorized calling cards, and selling them within the United States, constitute infringement of Mr. Heredia's copyright in the Urban Backpacker Illustration, in violation of Mr. Heredia's rights under the copyright laws of the United States, specifically 17 U.S.C. § 106.

Count II

11. Plaintiff realleges paragraphs 4 through 10 of this Complaint as if said allegations had been repeated herein in their entirety.

12. Salim has directly participated in the copyright infringement alleged herein in that he has and continues to exercise the power and authority to direct the actions of Millennium and he has a direct financial interest in the activities of Millennium including but not limited to the manufacture, distribution, and sale of calling cards with the Urban Backpacker Illustration, in violation of Heredia's rights under the copyright laws of the United States, specifically 17 U.S.C. § 106.

WHEREFORE, Heredia prays that this Honorable Court:

- A. Issue a preliminary order enjoining Millennium and all those acting in concert with Millennium, or who have obtained copies of Millennium's infringing calling cards, from all further manufacture, importation, sale, advertising and distribution of such calling cards, during the pendency of this litigation;
- B. Issue a preliminary order enjoining Salim and all those acting in concert with Salim from ordering the further manufacture, importation, sale, advertising and distribution of such calling cards, during the pendency of this litigation;
- C. Issue an order permanently enjoining Millennium, and all those acting in concert with Millennium or who have obtained copies of Millennium's infringing calling

cards, from all further manufacture, importation, sale, advertising and distribution of such calling cards;

- D. Issue an order permanently enjoining Salim and all those acting in concert with Salim from directing the further manufacture, importation, sale, advertising and distribution of such calling cards;
- E. Award Mr. Heredia all of his direct and consequential damages arising from Millennium and Salim's infringement and contributory infringement of Heredia's copyright.
- F. Award Mr. Heredia all profits earned by Millennium and Salim from the infringement of Heredia's copyright in accordance with § 504(c)(2) of the Copyright Act.
- E. Award Mr. Heredia his reasonable attorneys' fees, costs of suit and interest.
- F. Award Mr. Heredia such other and further relief as the Court deems just and proper.

PLAINTIFF DEMANDS A TRIAL BY JURY ON ALL COUNTS

DAVID HEREDIA

By his attorneys,

Date: March 10, 2009

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